

MEMORANDUM OF LAW

DATE: November 15, 1995

TO: Councilmember Barbara Warden

FROM: City Attorney

SUBJECT: Request for Opinion on City Liability for Off-Duty Conduct of Police Officers and Other Public Employees Under California Supreme Court Ruling, *Mary M. v. City of Los Angeles* (1991)

By memorandum dated October 18, 1995, you asked how the Supreme Court's decision in *Mary M. v. City of Los Angeles*, 54 Cal. 3d 202 (1991), and other legal decisions, impact the City's potential liability stemming from off-duty employment by police officers.

Mary M. v. City of Los Angeles

Briefly stated, the facts are as follows:

An officer, who was in uniform and driving a City-issued black and white vehicle, pulled the plaintiff over and subjected her to a field sobriety test. Instead of arresting or releasing her, the officer drove her home, where he raped her. The jury assessed general damage of one hundred and fifty thousand dollars (\$150,000.00) against the City which the Court of Appeal reversed. The Supreme Court reversed the judgment of the Court of Appeal and assessed damages against the City. The Supreme Court held that when a police officer on duty misuses his official authority by raping a woman whom he has detained, the public entity that employs him may be held vicariously liable.

Statutory Liability of the City

Government Code section 815.2 sets forth the circumstances under which the City may be vicariously liable for employee misconduct. Pursuant to this section a public entity is liable "for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative." (Emphasis added.)

Vicarious liability is a question of fact for the jury. In *Mary M. v. City of Los Angeles*, the court held the plaintiff presented sufficient evidence to support the jury's conclusion the rape occurred while the officer was acting within the scope of his employment. The court found the jury concluded the rape arose from the misuse of

official authority based on a number of factors including the fact the officer detained the plaintiff while he was on duty, in uniform, armed, and that he accomplished the detention by activating the red lights on his vehicle. In addition, the jury found the officer took advantage of his authority and control when he ordered the plaintiff into his patrol car and transported her to her home and when he threatened to take her to jail when she initially resisted him. Based on these facts, the court held the City liable under Government Code section 815.2 because the jury could reasonably conclude the officer was acting within the scope of his employment when he raped the plaintiff.

Another factor affecting vicarious liability concerns the reach of police authority. Under Penal Code section 830.1 peace officers have authority to take official actions anywhere within the state. This section provides, in part as follows:

The authority of these peace officers extends to any place in the state, as follows:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs the peace officer.

(2) Where the peace officer has the prior consent of the chief of police, or person authorized by him or her to give consent, if the place is within a city or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

(3) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.

Summary

The court's decision in *Mary M. v. City of Los Angeles* rests on the principle that a peace officer's special power and authority allow his or her will to be imposed on citizens. This power and authority is not limited to only uniformed or on-duty officers. Even when off-duty, peace officers have a responsibility under certain circumstances to take action anywhere within the state. Consequently, the issue of off-duty versus on-duty is usually not critical when officer misconduct involves displaying his or her badge, brandishing a regulation firearm or mentioning his or her status as a peace officer because these acts imply the use of state-conferred power and ability to subjugate the victim regardless of officer's duty status. Under this rationale, a jury would probably find officer misconduct committed under any of these

circumstances was within the scope of employment for purpose of finding the City liable for damages resulting from the officer's misconduct.

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By

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